



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**ELRC CASE 322 OF 2017**

**CLEMENT MURUNGA CHARLES.....APPLICANT**

**VERSUS**

**CHENWAYI ADVENTIST GUMBA.....RESPONDENT**

**R U L I N G**

1. By a Motion dated 18<sup>th</sup> March 2020 the Objector herein sought order among other that the attachment of the property in execution of the decree of the Court be lifted on the reason that the property did not belong to the judgement debtor. The attachment according to the Objector was therefore unlawful.
2. The application was supported by the affidavit of One Francis Saja Okeno who deponed among others that he was the Chief Principal of Chebwai Adventist Board of Management. He further stated that Motor Vehicle registration number KCA 495Y and photocopy machine attached in execution of the decree of the court belonged to the Objector who was not a party to the suit. He attached a log book showing the attached vehicle belonged to the Objector and not the judgement debtor.
3. The Claimant/Decree holder in opposition to the application deponed that judgement debtor Chebwayi Adventist Complex College and the Objector Chebwayi Adventist College were one and the same person under the stewardship of the SDA Church. It was further his deposition that the judgement and the Objector were one and were his employers.
4. The Claimant contended that the Objector had several genesis names which refer to the same institution. The letter head on which his termination letter was written belonged to Chebwayi Adventist Complex and that his pay slip issued on 16<sup>th</sup> February, 2019 was entitled Chebwayi Adventist Schools and T.T. College while the accountants rubberstamp read Chebwayi Adventist College.
5. The purpose of objection proceedings is to protect property wrongfully attached where such property does not belong to the judgement debtor. The proceedings must not be used to delay or frustrate the decree holder from realizing the fruits of the judgement.
6. The Court has reviewed and considered the objection proceedings and the grounds upon which it has been brought. The Court has further taken into account the decree holders' response in opposition to the application and is of the view that the Objection is no genuine.
7. There is reasonable cause to believe the decree holders contention that Chebway Adventist Complex (College) Chebway Adventist Complex and Chebwayi Adventist Schools and T.T. College are the same institution or one organization.
8. The Claimant attached his termination letter which was written the letterhead of Chebwayi Adventist College however .....the rubber stamp on the same letter is for Chebwayi Adventist College, the Objector herein. Further the Claimant's pay slip attached is issued by Chibwai Adventist Schools and T.T. College. The Objector did not or rather offer any satisfactory rejoinder to these strange coincidences particularly how could the termination letter issued by the judgement debtor bear the rubberstamp of the Objector if there was no close relationship between the two.
9. There has noted that the judgement debtor though served never defended the claim hence the same proceeded as undefended cause and ex parte judgement delivered by Lady Justice Mbaru on 24<sup>th</sup> September, 2018. The Objection application was filed on 20<sup>th</sup> March, 2020 almost one and a half year later. The Objector application for reason stated above is therefore not genuine and a belated attempt to unfairly doing the Claimant decree holder fruits of his judgement.
10. The same is therefore found without merit and is hereby dismissed with costs.
11. It is so ordered.

Dated at Eldoret this 30<sup>th</sup> day of October 2020

**Abuodha Jorum Nelson**

**Judge**

Delivered this 30th day of October 20120

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**